

AMENDED IN SENATE APRIL 21, 2003

**SENATE BILL**

**No. 1005**

**Introduced by Senator Dunn**

February 21, 2003

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An act to amend Sections 1279, 1280, 1280.1, and 1280.2 of, and to add Sections 1266.2 and 1279.1 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1005, as amended, Dunn. Fees: inspections: deficiencies: corrections.

Under existing law, a “health facility” means any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical and mental, as specified, and includes, among others, general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined. These facilities are regulated by the State Department of Health Services. A violation of the law relating to health facilities is a misdemeanor.

This bill would require the department to levy a fee on these health facilities in order to ensure an adequate level of licensing and certification staff to perform inspections, as required by this bill.

Under existing law, a general acute care hospital, acute psychiatric hospital, and special hospital, as defined, are required to pay an annual fee, as specified, plus \$8 per bed, with each new and renewal application for a license.

This bill would require that these facilities, when applying for a new license or a renewal of a license, pay a fee that may not exceed \$5 per bed, *in addition to existing fees, as specified.*

This bill would require the department to seek federal financial participation to match the above fees.

Existing law requires inspections, as specified, of health facilities, as specified, for which a license or special permit has been issued, with the exception of health facilities, other than general acute care hospitals, that are certified to participate in the Medicare or medicaid program.

This bill would require that the department ensure that periodic inspections conducted pursuant to existing law are not announced in advance of the date of the inspection. This bill would authorize the department to conduct inspections jointly with other entities, as specified, but would require that if the other entity provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

Existing law requires the department to adopt regulations that establish minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit for general acute care hospitals, acute psychiatric hospitals, and special hospitals, as defined.

This bill would require the department to inspect for compliance with these requirements when conducting the above state or federal periodic inspections of a general acute care hospital.

Existing law exempts from periodic inspections specified health facilities, other than general acute care hospitals, that are certified to participate in the Medicare or medicaid program.

This bill would establish a complaint procedure for complaints involving health facilities, as defined, would establish inspection procedures and requirements, would authorize the department to issue citations, as specified, would require the department to notify the complainant and licensee in writing of the department's determination as a result of the inspection or investigation, would establish an informal conference procedure for resolution of complaints, at the request of the complainant, by the designee of the director for the county in which the health facility is located, and would establish appellate procedures for the complainant.

Existing law authorizes the department to provide consulting services, upon request, to any health facility, to assist in the identification or correction of deficiencies or the upgrading of ~~quality~~ *quality* of care provided by the health facility. Existing law requires the department to notify the facility of deficiencies, and authorizes the



department to take action to revoke or suspend the facilities license if the deficiencies are not corrected within a reasonable time.

This bill would provide that the time to correct the deficiencies may not exceed 180 days.

Existing law requires that if the health facility is a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, and the facility fails to implement a plan of correction, agreed on by the facility and the department, for deficiencies, the department may order implementation of the plan. Existing law also provides that if the facility and the department fail to agree on a plan of correction within a reasonable time, and if the deficiency poses an immediate and substantial hazard to the health or safety of patients, the director may take action to order implementation of a plan of correction devised by the department.

This bill would provide that the time to implement the plan of correction may not exceed 180 calendar days, that the time to agree on a plan shall not exceed 60 days, and that the director may take action to order implementation of a plan of correction devised by the department if the deficiency poses a significant, rather than immediate and substantial, hazard to the health or safety of patients.

Existing law provides that if a condition within a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, poses an immediate and substantial hazard to the health or safety of patients, the department may make specified orders if the facility was cited after January 1, 1994.

This bill would, instead, authorize these actions if the deficiency poses a significant hazard, or if the department receives a complaint about a similar condition within 12 months of a complaint or a deficiency, or if the completion of a plan of correction for a significant hazard has not been documented by the department within 190 calendar days of the deficiency. This bill would provide that these provisions would not apply to a deficiency for which a facility was cited prior to January 1, 2004.

Existing law requires that reports on the results of each inspection of a health facility shall be prepared by the inspector or inspector team and shall be kept on file in the department along with the plan of correction and health facility comments. Existing law authorizes the inspection report to include a recommendation.

This bill would require that the inspection report include a recommended date for reinspection in order to ensure compliance with



the plan of correction, that a reinspection be conducted ~~with~~ *within* 180 days of the deficiency, and that a reinspection may be conducted during a periodic inspection, discussed above.

Existing law provides that if a general acute care hospital, acute psychiatric hospital, or special hospital, as defined, fails to correct a deficiency that ~~pose~~ *poses* an immediate and substantial hazard to the health or safety of patients, within the time specified in the plan of correction, the department may levy fines, as specified.

This bill would provide that the time period for correction must be the lesser of 180 days or the time specified in a plan of correction, and that failure to correct a deficiency may be substantiated by a subsequent complaint about a condition similar to the one that gave rise to the prior deficiency. *The bill would authorize licensees to appeal the assessment of these civil penalties.*

Existing law states it is the intent of the Legislature that nothing in specified sections of law shall be construed to require the retrofitting of hospital buildings built prior to January 1, 1994, to meet seismic standards in effect on that date.

This bill would change that date to January 1, 2004.

Because a violation of the provisions of the bill would constitute a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1266.2 is added to the Health and Safety
- 2 Code, to read:
- 3 1266.2. (a) In order to ensure an adequate level of licensing
- 4 and certification staff to perform inspections pursuant to the
- 5 requirements of this article, and to enforce the requirements of this
- 6 chapter, the department shall ~~do both of the following:~~
- 7 ~~(1) Levy a fee on health facilities licensed pursuant to~~ *levy a fee*
- 8 *not to exceed five dollars (\$5) per bed on health facilities licensed*

pursuant to subdivisions (a), (b), and (f) of Section ~~1250, not to~~  
1250. *This fee may not exceed the actual and reasonable costs of*  
enforcement of this article *and shall be in addition to the license*  
*fees levied pursuant to paragraph (1) of subdivision (a) of Section*  
1266.

~~(2) Require that a facility applying for a license pursuant to~~  
~~paragraph (1) of subdivision (a) of Section 1266 pay a fee that may~~  
~~not exceed five dollars (\$5) per bed, not to exceed actual and~~  
~~reasonable costs of enforcement of this article.~~

(b) The department shall seek federal financial participation  
consistent with Title XIX (42 U.S.C. Sec. 1396 et seq.) of the  
federal Social Security Act to match the fees paid pursuant to  
subdivision (a).

SEC. 2. Section 1279 of the Health and Safety Code is  
amended to read:

1279. (a) Every health facility for which a license or special  
permit has been issued, except a health facility, as defined in  
subdivisions (b) to (k), inclusive, of Section 1250, that is certified  
to participate either in the Medicare program under Title XVIII (42  
U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or in  
the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et  
seq.) of the federal Social Security Act, or both, shall be  
periodically inspected by a representative or representatives  
appointed by the state department, depending upon the type and  
complexity of the health facility or special service to be inspected.

(b) If the health facility is deemed to meet standards for  
certification to participate in either the Medicare program or the  
medicaid program, or both, because the health facility meets the  
standards of an agency other than the ~~Health Care Financing~~  
~~Administration—Centers for Medicare and Medicaid Services~~,  
then, in order for the health facility to qualify for the exemption  
from periodic inspections provided in this section, the inspection  
to determine that the health facility meets the standards of an  
agency other than the ~~Health Care Financing Administration~~  
~~Centers for Medicare and Medicaid Services~~ shall include  
participation by the California Medical Association to the same  
extent as it participated in inspections as provided in Section 1282  
prior to the ~~date effective date~~ of this section, as amended by S.B.  
1779 of the 1991–92 Regular Session.

(c) Except as provided in subdivision (d), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(d) For a health facility specified in subdivision (a) or (b) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(e) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(f) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer such advice and assistance to the hospital as it deems appropriate.

(g) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of the inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

(h) Notwithstanding any other provision of law, the department shall inspect for compliance with Section 1276.4 during a state or federal periodic inspection, including, but not limited to, an inspection required under this section. This inspection requirement shall not limit the department's authority in other circumstances to cite for violations of Section 1276.4 or to inspect for compliance with Section 1276.4.

SEC. 3. Section 1279.1 is added to the Health and Safety Code, to read:

1279.1. (a) (1) Upon receipt of a written or oral complaint involving a health facility, as defined in Section 1250, the department shall assign an inspector to make a preliminary review of the complaint, and shall notify the complainant within two working days of the receipt of the complaint of the name of the inspector. Unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable

basis, it shall conduct an onsite inspection or investigation within 10 working days of the receipt of the complaint. In any case in which the complaint involves a matter that creates a threat of imminent danger of death or serious bodily harm, the department shall make an onsite inspection or investigation within 24 hours of the receipt of the complaint. In any event, the complainant shall be promptly informed of the department's proposed course of action and of the opportunity to accompany the inspector on the inspection or investigation of the facility. Upon the request of either the complainant or the department, the complainant ~~or his or her representative~~, *or a family member or other representative of the complainant*, or both, may be allowed to accompany the inspector to the site of the alleged violations during his or her tour of the facility, unless the inspector determines that the privacy of any patient would be violated.

(2) When conducting an onsite inspection or investigation pursuant to this section, the department shall collect and evaluate all available evidence and may issue a citation based upon, but not limited to, all of the following:

- (A) Observed conditions.
- (B) Statements of witnesses.
- (C) Facility records.

(3) Within 10 working days of the completion of the complaint investigation, the department shall notify the complainant and licensee in writing of the department's determination as a result of the inspection or investigation.

(b) (1) When the department provides notice pursuant to paragraph (3) of subdivision (a), the department shall notify the complainant of the right to an informal conference.

(2) A complainant who is dissatisfied with the department's determination regarding a matter that would pose a threat to the health, safety, security, welfare, or rights of a ~~resident~~ *patient* may, within five business days after receipt of the notice, notify the director in writing of his or her request for an informal conference. The informal conference shall be held with the designee of the director for the county in which the health facility that is the subject of the complaint is located. The health facility may participate as a party in the informal conference. The director's designee shall notify the complainant and licensee of his or her determination within 10 working days after the informal



1 conference and shall notify the complainant and licensee in writing  
2 of the appeal rights provided in subdivision (c).

3 (c) If the complainant is dissatisfied with the determination of  
4 the director's designee, the complainant may, within 15 days after  
5 receipt of this determination, notify in writing the Deputy Director  
6 of the Licensing and Certification Division of the department, who  
7 shall assign the request to a representative of the Complainant  
8 Appeals Unit for review of the facts that led to the determination.  
9 As a part of the Complainant Appeals Unit's independent  
10 investigation, and at the request of the complainant, the  
11 representative shall interview the complainant in the district office  
12 where the complaint was initially referred. *If the health facility so*  
13 *requests, the representative shall also interview representatives of*  
14 *the health facility. This interview shall be conducted separately*  
15 *from the interview of the complainant.* Based upon this review, the  
16 Deputy Director of the Licensing and Certification Division of the  
17 department shall make his or her own determination and notify the  
18 complainant and the *health* facility within 30 days.

19 (d) For purposes of this section, "complaint" means any oral  
20 or written notice to the department, other than a report from the  
21 facility, of an alleged violation of applicable requirements of state  
22 or federal law or an allegation of facts that might constitute a  
23 violation of applicable requirements of state or federal law.

24 SEC. 4. Section 1280 of the Health and Safety Code is  
25 amended to read:

26 1280. (a) The department may provide consulting services  
27 upon request to any health facility to assist in the identification or  
28 correction of deficiencies or the upgrading of the quality of care  
29 provided by the health facility.

30 (b) The department shall notify the health facility of all  
31 deficiencies in its compliance with this chapter and the rules and  
32 regulations adopted hereunder, and the health facility shall agree  
33 with the department upon a plan of correction that shall give the  
34 health facility a reasonable time to correct these deficiencies. The  
35 time given to the health facility to correct the deficiencies may not  
36 exceed 180 calendar days. If at the end of the allotted time, as  
37 revealed by inspection, the health facility has failed to correct the  
38 deficiencies, the director may take action to revoke or suspend the  
39 license.



(c) (1) In addition to subdivision (a), if the health facility is licensed under subdivision (a), (b), or (f) of Section 1250, and if the facility fails to implement a plan of correction that has been agreed upon by both the facility and the department within a reasonable time, the department may order implementation of the plan of correction previously agreed upon by the facility and the department. The time given to the health facility to implement the plan of correction may not exceed 180 calendar days. If the facility and the department fail to agree upon a plan of correction within a reasonable time, which may not exceed 60 days, and if the deficiency poses a significant hazard to the health or safety of patients, then the director may take action to order implementation of a plan of correction devised by the department. The order shall be in writing and shall contain a statement of the reasons for the order. If the facility does not agree that the deficiency poses a significant hazard to the health or safety of patients, or if the facility believes that the plan of correction will not correct the hazard, or if the facility proposes a more efficient or effective means of remedying the deficiency, the facility may, within 10 days of receiving the plan of correction from the department, appeal the order to the director. The director shall review information provided by the facility, the department, and other affected parties and, within a reasonable time, shall render a decision in writing that shall include a statement of reasons for the order. During the period in which the director is reviewing the appeal, the order to implement the plan of correction shall be stayed. The opportunity for appeal provided pursuant to this subdivision shall not be deemed to be an adjudicative hearing and is not required to comply with Section 100171.

(2) If any condition within a health facility licensed under subdivision (a), (b), or (f) of Section 1250 poses a significant hazard to the health or safety of patients, or if the department receives a complaint about a similar condition within 12 months of a complaint or a deficiency, or if completion of a plan of correction for a significant hazard has not been documented by the department within 180 calendar days of the deficiency, the department may order either of the following until the hazardous condition is corrected:

(A) ~~Reduction~~ *A reduction in the number of patients or a ban on the admission of patients.*

1 (B) ~~Closure~~ *The closure of all or part* of the unit or units within  
2 the facility that pose the risk. If the unit to be closed is an  
3 emergency room in a designated facility, as defined in Section  
4 1797.67, the department shall notify and coordinate with the local  
5 emergency medical services agency.

6 (3) The facility may appeal an order pursuant to paragraph (2)  
7 by appealing to the superior court of the county in which the  
8 facility is located.

9 (4) Paragraph (2) shall not apply to a deficiency for which the  
10 facility was cited prior to January 1, 2004.

11 (d) Reports on the results of each inspection of a health facility  
12 shall be prepared by the inspector or inspector team and shall be  
13 kept on file in the department along with the plan of correction and  
14 health facility comments. The inspection report shall include a  
15 recommended date for reinspection in order to ensure compliance  
16 with the plan of correction. The reinspection may not be more than  
17 180 days after the citation of deficiency. A reinspection may be  
18 conducted during a periodic inspection required pursuant to  
19 Section 1279. Inspection reports of an intermediate care  
20 facility/developmentally disabled habilitative or an intermediate  
21 care facility/developmentally disabled—nursing shall be provided  
22 by the department to the appropriate regional center pursuant to  
23 Chapter 5 (commencing with Section 4620) of Division 4.5 of the  
24 Welfare and Institutions Code.

25 (e) All inspection reports and lists of deficiencies shall be open  
26 to public inspection when the department has received verification  
27 that the health facility has received the report from the department.  
28 All plans of correction shall be open to public inspection upon  
29 receipt by the department.

30 (f) In no event shall the act of providing a plan of correction,  
31 the content of the plan of correction, or the execution of a plan of  
32 correction, be used in any legal action or administrative  
33 proceeding as an admission within the meaning of Sections 1220  
34 to 1227, inclusive, of the Evidence Code against the health facility,  
35 its licensee, or its personnel.

36 SEC. 5. Section 1280.1 of the Health and Safety Code is  
37 amended to read:

38 1280.1. (a) If a licensee of a health facility licensed under  
39 subdivision (a), (b), or (f) of Section 1250 fails to correct a  
40 deficiency within the lesser of 180 days or the time specified in a

1 plan of correction, the department may assess the licensee a civil  
2 penalty in an amount not to exceed fifty dollars (\$50) per patient  
3 affected by the deficiency for each day that the deficiency  
4 continues beyond the date specified for correction. For purposes  
5 of this section, failure to correct a deficiency may be substantiated  
6 by a subsequent *validated* complaint about a condition similar to  
7 the one that gave rise to the deficiency. The civil penalties shall be  
8 assessed only for deficiencies that pose a significant hazard to the  
9 health or safety of patients. If the licensee disputes a determination  
10 by the department regarding alleged failure to correct a deficiency  
11 or regarding the reasonableness of the proposed deadline for  
12 correction, the licensee may, within 10 days, request a hearing  
13 pursuant to Section 100171. Penalties shall be paid when appeals  
14 pursuant to those provisions have been exhausted.

15 (b) This section shall not apply to a deficiency for which a  
16 facility was cited prior to January 1, 1994.

17 (c) *A licensee may appeal a civil penalty assessed pursuant to*  
18 *this section. If a civil penalty is appealed pursuant to this section,*  
19 *proceedings shall be conducted in accordance with Section*  
20 *100171.*

21 (d) *Civil penalties collected pursuant to this section shall be*  
22 *used for the purpose of enforcement of this chapter.*

23 SEC. 6. Section 1280.2 of the Health and Safety Code is  
24 amended to read:

25 1280.2. (a) No deficiency cited pursuant to paragraph (2) of  
26 subdivision (b) of Section 1280 or Section 1280.1 shall be for the  
27 failure of a facility to meet the requirements of the California  
28 Building Standards Code if, as of January 1, 1994, the hospital  
29 building was approved under Chapter 12.5 (commencing with  
30 Section 15000) of Division 12.5, or if the hospital building was  
31 exempt from that approval under any other provision of law in  
32 effect on that date.

33 (b) It is the intent of the Legislature that neither the  
34 amendments made to Section 1280 by Chapter 1152 of the Statutes  
35 of 1993, nor Section 1280.1 shall be construed to require the  
36 retrofitting of hospital buildings built prior to January 1, 2004, to  
37 meet seismic standards in effect on that date.

38 SEC. 7. No reimbursement is required by this act pursuant to  
39 Section 6 of Article XIII B of the California Constitution because  
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or  
2 infraction, eliminates a crime or infraction, or changes the penalty  
3 for a crime or infraction, within the meaning of Section 17556 of  
4 the Government Code, or changes the definition of a crime within  
5 the meaning of Section 6 of Article XIII B of the California  
6 Constitution.

